

§ 1026.19 Certain mortgage and variable-rate transactions.

(a) *Reverse mortgage transactions subject to RESPA.* (1)(i) *Time of disclosures.* In a reverse mortgage transaction subject to both § 1026.33 and the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) that is secured by the consumer's dwelling, the creditor shall provide the consumer with good faith estimates of the disclosures required by § 1026.18 and shall deliver or place them in the mail not later than the third business day after the creditor receives the consumer's written application.

(ii) *Imposition of fees.* Except as provided in paragraph (a)(1)(iii) of this section, neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application for a reverse mortgage transaction subject to paragraph (a)(1)(i) of this section before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section. If the disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

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(e) *Mortgage loans secured by real property—early disclosures.* (1) *Provision of disclosures.* (i) *Creditor.* In a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, the creditor shall provide the consumer with good faith estimates of the disclosures in § 1026.37.

(ii) *Mortgage broker.* (A) If a mortgage broker receives a consumer's application, either the creditor or the mortgage broker shall provide a consumer with the disclosures required under paragraph (e)(1)(i) of this section in accordance with paragraph (e)(1)(iii) of this section. If the mortgage broker provides the required disclosures, the mortgage broker shall comply with all relevant requirements of this paragraph (e). The creditor shall ensure that such disclosures are provided in accordance with all requirements of this paragraph (e). Disclosures provided by a mortgage broker in accordance with the requirements of this paragraph (e) satisfy the creditor's obligation under this paragraph (e).

(B) If a mortgage broker provides any disclosure under § 1026.19(e), the mortgage broker shall also comply with the requirements of § 1026.25(c).

(iii) *Timing.* (A) The creditor shall deliver or place in the mail the disclosures required under paragraph (e)(1)(i) of this section not later than the third business day after the creditor receives the consumer's application, as defined in § 1026.2(a)(3).

(B) Except as set forth in paragraph (e)(1)(iii)(C) of this section, the creditor shall

deliver or place in the mail the disclosures required under paragraph (e)(1)(i) of this section not later than the seventh business day before consummation of the transaction.

(C) For a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), paragraph (e)(1)(iii)(B) of this section does not apply.

(iv) *Receipt of early disclosures.* If any disclosures required under paragraph (e)(1)(i) of this section are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail.

(v) *Consumer's waiver of waiting period before consummation.* If the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may modify or waive the seven-business-day waiting period for early disclosures required under paragraph (e)(1)(iii)(B) of this section, after receiving the disclosures required under paragraph (e)(1)(i) of this section. To modify or waive the waiting period, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.

(vi) *Shopping for settlement service providers.* (A) *Shopping permitted.* A creditor permits a consumer to shop for a settlement service if the creditor permits the consumer to select the provider of that service, subject to reasonable requirements.

(B) *Disclosure of services.* The creditor shall identify the settlement services for which the consumer is permitted to shop in the disclosures required under paragraph (e)(1)(i) of this section.

(C) *Written list of providers.* If the consumer is permitted to shop for a settlement service, the creditor shall provide the consumer with a written list identifying available providers of that settlement service and stating that the consumer may choose a different provider for that service. The creditor must identify at least one available provider for each settlement service for which the consumer is permitted to shop. The creditor shall provide this written list of settlement service providers separately from the disclosures required by paragraph (e)(1)(i) of this section but in accordance with the timing requirements in paragraph (e)(1)(iii) of this section.

(2) *Predisclosure activity.* (i) *Imposition of fees on consumer.* (A) *Fee restriction.* Except as provided in paragraph (e)(2)(i)(B) of this section, neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application for a mortgage transaction subject to paragraph

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(e)(1)(i) of this section before the consumer has received the disclosures required under paragraph (e)(1)(i) of this section and indicated to the creditor an intent to proceed with the transaction described by those disclosures. A consumer may indicate an intent to proceed with a transaction in any manner the consumer chooses, unless a particular manner of communication is required by the creditor. The creditor must document this communication to satisfy the requirements of § 1026.25.

(B) *Exception to fee restriction.* A creditor or other person may impose a bona fide and reasonable fee for obtaining the consumer's credit report before the consumer has received the disclosures required under paragraph (e)(1)(i) of this section.

(ii) *Written information provided to consumer.* If a creditor or other person provides a consumer with a written estimate of terms or costs specific to that consumer before the consumer receives the disclosures required under paragraph (e)(1)(i) of this section, the creditor or such person shall clearly and conspicuously state at the top of the front of the first page of the estimate in a font size that is no smaller than 12-point font: "Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan." The written estimate of terms or costs may not be made with headings, content, and format substantially similar to form H-24 or H-25 of appendix H to this part.

(iii) *Verification of information.* The creditor or other person shall not require a consumer to submit documents verifying information related to the consumer's application before providing the disclosures required by paragraph (e)(1)(i) of this section.

(3) *Good faith determination for estimates of closing costs—* (i) *General rule.* An estimated closing cost disclosed pursuant to paragraph (e) of this section is in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed under paragraph (e)(1)(i) of this section, except as otherwise provided in paragraphs (e)(3)(ii) through (iv) of this section.

(ii) *Limited increases permitted for certain charges.* An estimate of a charge for a third-party service or a recording fee is in good faith if:

(A) The aggregate amount of charges for third-party services and recording fees paid by or imposed on the consumer does not exceed the aggregate amount of such charges disclosed under paragraph (e)(1)(i) of this section by more than 10 percent;

(B) The charge for the third-party service is not paid to the creditor or an affiliate of the creditor; and

(C) The creditor permits the consumer to shop for the third-party service, consistent with paragraph (e)(1)(vi) of this section.

(iii) *Variations permitted for certain charges.* An estimate of the following charges is in good faith if it is consistent with the best information reasonably available to the creditor at the time it is disclosed, regardless of whether the amount paid by the consumer exceeds the amount disclosed under paragraph (e)(1)(i) of this section:

(A) Prepaid interest;

(B) Property insurance premiums;

(C) Amounts placed into an escrow, impound, reserve, or similar account;

(D) Charges paid to third-party service providers selected by the consumer consistent with paragraph (e)(1)(vi)(A) of this section that are not on the list provided pursuant to paragraph (e)(1)(vi)(C) of this section; and

(E) Charges paid for third-party services not required by the creditor. These charges may be paid to affiliates of the creditor.

(iv) *Revised estimates.* For the purpose of determining good faith under paragraph (e)(3)(i) and (ii) of this section, a creditor may use a revised estimate of a charge instead of the estimate of the charge originally disclosed under paragraph (e)(1)(i) of this section if the revision is due to any of the following reasons:

(A) *Changed circumstance affecting settlement charges.* Changed circumstances cause the estimated charges to increase or, in the case of estimated charges identified in paragraph (e)(3)(ii) of this section, cause the aggregate amount of such charges to increase by more than 10 percent. For purposes of this paragraph, "changed circumstance" means:

(1) An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction;

(2) Information specific to the consumer or transaction that the creditor relied upon when providing the disclosures required under paragraph (e)(1)(i) of this section and that was inaccurate or changed after the disclosures were provided; or

(3) New information specific to the consumer or transaction that the creditor did not rely on when providing the original disclosures required under paragraph (e)(1)(i) of this section.

(B) *Changed circumstance affecting eligibility.* The consumer is ineligible for an estimated charge previously disclosed because a changed circumstance, as defined under paragraph (e)(3)(iv)(A) of this section, affected the consumer's creditworthiness or the value of the security for the loan.

(C) *Revisions requested by the consumer.* The consumer requests revisions to the credit terms or the settlement that cause an estimated charge to increase.

(D) *Interest rate dependent charges.* The points or lender credits change because the interest rate was not locked when the disclosures required under paragraph (e)(1)(i) of this section were provided. On the date the

interest rate is locked, the creditor shall provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section to the consumer with the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms.

(E) *Expiration.* The consumer indicates an intent to proceed with the transaction more than ten business days after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section.

(F) *Delayed settlement date on a construction loan.* In transactions involving new construction, where the creditor reasonably expects that settlement will occur more than 60 days after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section, the creditor may provide revised disclosures to the consumer if the original disclosures required under paragraph (e)(1)(i) of this section state clearly and conspicuously that at any time prior to 60 days before consummation, the creditor may issue revised disclosures. If no such statement is provided, the creditor may not issue revised disclosures, except as otherwise provided in paragraph (f) of this section.

(4) *Provision and receipt of revised disclosures.* (i) *General rule.* Subject to the requirements of paragraph (e)(4)(ii) of this section, if a creditor uses a revised estimate pursuant to paragraph (e)(3)(iv) of this section for the purpose of determining good faith under paragraphs (e)(3)(i) and (ii) of this section, the creditor shall provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under paragraphs (e)(3)(iv)(A) through (C), (E) and (F) of this section applies.

(ii) *Relationship to disclosures required under § 1026.19(f)(1)(i).* The creditor shall not provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section on or after the date on which the creditor provides the disclosures required under paragraph (f)(1)(i) of this section. The consumer must receive a revised version of the disclosures required under paragraph (e)(1)(i) of this section not later than four business days prior to consummation. If the revised version of the disclosures required under paragraph (e)(1)(i) of this section is not provided to the consumer in person, the consumer is considered to have received such version three business days after the creditor delivers or places such version in the mail.

(f) *Mortgage loans secured by real property—final disclosures.* (1) *Provision of disclosures.* (i) *Scope.* In a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, the

creditor shall provide the consumer with the disclosures in § 1026.38 reflecting the actual terms of the transaction.

(ii) *Timing.* (A) *In general.* Except as provided in paragraphs (f)(1)(ii)(B), (f)(2)(i), (f)(2)(iii), (f)(2)(iv), and (f)(2)(v) of this section, the creditor shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section no later than three business days before consummation.

(B) *Timeshares.* For transactions secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), the creditor shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section no later than consummation.

(iii) *Receipt of disclosures.* If any disclosures required under paragraph (f)(1)(i) of this section are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail.

(iv) *Consumer's waiver of waiting period before consummation.* If the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may modify or waive the three-business-day waiting period under paragraph (f)(1)(ii)(A) or (f)(2)(ii) of this section, after receiving the disclosures required under paragraph (f)(1)(i) of this section. To modify or waive the waiting period, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.

(v) *Settlement agent.* A settlement agent may provide a consumer with the disclosures required under paragraph (f)(1)(i) of this section, provided the settlement agent complies with all relevant requirements of this paragraph (f). The creditor shall ensure that such disclosures are provided in accordance with all requirements of this paragraph (f). Disclosures provided by a settlement agent in accordance with the requirements of this paragraph (f) satisfy the creditor's obligation under this paragraph (f).

(2) *Subsequent changes.* (i) *Changes before consummation not requiring a new waiting period.* Except as provided in paragraph (f)(2)(ii), if the disclosures provided under paragraph (f)(1)(i) of this section become inaccurate before consummation, the creditor shall provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. Notwithstanding the requirement to provide corrected disclosures at or before consummation, the creditor shall permit the consumer to inspect the disclosures provided under

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this paragraph, completed to set forth those items that are known to the creditor at the time of inspection, during the business day immediately preceding consummation, but the creditor may omit from inspection items related only to the seller's transaction.

(ii) *Changes before consummation requiring a new waiting period.* If one of the following disclosures provided under paragraph (f)(1)(i) of this section becomes inaccurate in the following manner before consummation, the creditor shall ensure that the consumer receives corrected disclosures containing all changed terms in accordance with the requirements of paragraph (f)(1)(ii)(A) of this section:

(A) The annual percentage rate disclosed under § 1026.38(o)(4) becomes inaccurate, as defined in § 1026.22.

(B) The loan product is changed, causing the information disclosed under § 1026.38(a)(5)(iii) to become inaccurate.

(C) A prepayment penalty is added, causing the statement regarding a prepayment penalty required under § 1026.38(b) to become inaccurate.

(iii) *Changes due to events occurring after consummation.* If during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures required under paragraph (f)(1)(i) of this section to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed under paragraph (f)(1)(i) of this section, the creditor shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred.

(iv) *Changes due to clerical errors.* A creditor does not violate paragraph (f)(1)(i) of this section if the disclosures provided under paragraph (f)(1)(i) contain non-numeric clerical errors, provided the creditor delivers or places in the mail corrected disclosures no later than 60 days after consummation.

(v) *Refunds related to the good faith analysis.* If amounts paid by the consumer exceed the amounts specified under paragraph (e)(3)(i) or (ii) of this section, the creditor complies with paragraph (e)(1)(i) of this section if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor complies with paragraph (f)(1)(i) of this section if the creditor delivers or places in the mail corrected disclosures that reflect such refund no later than 60 days after consummation.

(3) *Charges disclosed.* (i) *Actual charge.* The amount imposed upon the consumer for any settlement service shall not exceed the amount actually received by the settlement service provider for that service, except as otherwise provided in paragraph (f)(3)(ii) of this section.

(ii) *Average charge.* A creditor or settlement service provider may charge a consumer or seller the average charge for a settlement service if the following conditions are satisfied:

(A) The average charge is no more than the average amount paid for that service by or on behalf of all consumers and sellers for a class of transactions;

(B) The creditor or settlement service provider defines the class of transactions based on an appropriate period of time, geographic area, and type of loan;

(C) The creditor or settlement service provider uses the same average charge for every transaction within the defined class; and

(D) The creditor or settlement service provider does not use an average charge:

(1) For any type of insurance;

(2) For any charge based on the loan amount or property value; or

(3) If doing so is otherwise prohibited by law.

(4) *Transactions involving a seller.* (i) *Provision to seller.* In a closed-end consumer credit transaction secured by real property that involves a seller, other than a reverse mortgage subject to § 1026.33, the settlement agent shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction.

(ii) *Timing.* The settlement agent shall provide the disclosures required under paragraph (f)(4)(i) of this section no later than the day of consummation. If during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes disclosures required under paragraph (f)(4)(i) of this section to become inaccurate, and such inaccuracy results in a change to the amount actually paid by the seller from that amount disclosed under paragraph (f)(4)(i) of this section, the settlement agent shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred.

(iii) *Charges disclosed.* The amount imposed on the seller for any settlement service shall not exceed the amount actually received by the service provider for that service, except as otherwise provided in paragraph (f)(3)(ii) of this section.

(iv) *Creditor's copy.* When the consumer's and seller's disclosures under this paragraph (f) are provided on separate documents, as permitted under § 1026.38(t)(5), the settlement agent shall provide to the creditor (if the creditor is not the settlement agent) a copy of the disclosures provided to the seller under paragraph (f)(4)(i) of this section.

(5) *No fee.* No fee may be imposed on any person, as a part of settlement costs or otherwise, by a creditor or by a servicer (as that term is defined under 12 U.S.C. 2605(i)(2)) for

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the preparation or delivery of the disclosures required under paragraph (f)(1)(i) of this section.

(g) *Special information booklet at time of application.* (1) *Creditor to provide special information booklet.* Except as provided in paragraphs (g)(1)(ii) and (iii) of this section, the creditor shall provide a copy of the special information booklet (required pursuant to section 5 of the Real Estate Settlement Procedures Act (12 U.S.C. 2604) to help consumers applying for federally related mortgage loans understand the nature and cost of real estate settlement services) to a consumer who applies for a consumer credit transaction secured by real property.

(i) The creditor shall deliver or place in the mail the special information booklet not later than three business days after the consumer's application is received. However, if the creditor denies the consumer's application before the end of the three-business-day period, the creditor need not provide the booklet. If a consumer uses a mortgage broker, the mortgage broker shall provide the special information booklet and the creditor need not do so.

(ii) In the case of a home equity line of credit subject to §1026.40, a creditor or mortgage broker that provides the consumer with a copy of the brochure entitled "When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit," or any successor brochure issued by the Bureau, is deemed to be in compliance with this section.

(iii) The creditor or mortgage broker need not provide the booklet to the consumer for a consumer credit transaction secured by real property, the purpose of which is not the purchase of a one-to-four family residential property, including, but not limited to, the following:

- (A) Refinancing transactions;
- (B) Closed-end loans secured by a subordinate lien; and
- (C) Reverse mortgages.

(2) *Permissible changes.* Creditors may not make changes to, deletions from, or additions to the special information booklet other than the changes specified in paragraphs (g)(2)(i) through (iv) of this section.

(i) In the "Complaints" section of the booklet, "the Bureau of Consumer Financial Protection" may be substituted for "HUD's Office of RESPA" and "the RESPA office."

(ii) In the "Avoiding Foreclosure" section of the booklet, it is permissible to inform homeowners that they may find information on and assistance in avoiding foreclosures at <http://www.consumerfinance.gov>. The reference to the HUD Web site, <http://www.hud.gov/foreclosure/>, in the "Avoiding Foreclosure" section of the booklet shall not be deleted.

(iii) In the "No Discrimination" section of the appendix to the booklet, "the Bureau of Consumer Financial Protection" may be sub-

stituted for the reference to the "Board of Governors of the Federal Reserve System." In the Contact Information section of the appendix to the booklet, the following contact information for the Bureau may be added: "Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552; www.consumerfinance.gov/learnmore." The contact information for HUD's Office of RESPA and Interstate Land Sales may be removed from the "Contact Information" section of the appendix to the booklet.

(iv) The cover of the booklet may be in any form and may contain any drawings, pictures or artwork, provided that the title appearing on the cover shall not be changed. Names, addresses, and telephone numbers of the creditor or others and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear on the cover. References to HUD on the cover of the booklet may be changed to references to the Bureau.

§ 1026.20 Subsequent disclosure requirements.

(a) *Refinancings.* A refinancing occurs when an existing obligation that was subject to this subpart is satisfied and replaced by a new obligation undertaken by the same consumer. A refinancing is a new transaction requiring new disclosures to the consumer. The new finance charge shall include any unearned portion of the old finance charge that is not credited to the existing obligation. The following shall not be treated as a refinancing:

(1) A renewal of a single payment obligation with no change in the original terms.

(2) A reduction in the annual percentage rate with a corresponding change in the payment schedule.

(3) An agreement involving a court proceeding.

(4) A change in the payment schedule or a change in collateral requirements as a result of the consumer's default or delinquency, unless the rate is increased, or the new amount financed exceeds the unpaid balance plus earned finance charge and premiums for continuation of insurance of the types described in §1026.4(d).

(5) The renewal of optional insurance purchased by the consumer and added to an existing transaction, if disclosures relating to the initial purchase were provided as required by this subpart.